

REMARKS/ARGUMENTS

Applicants acknowledge receipt of the Office Action dated June 24, 2005. By this Response, claims 1-5 and the Abstract are amended. The Examiner has requested a complete revision of the Abstract. Claim 4 is objected to for informalities. Claims 1-2 are rejected under 35 U.S.C. §§ 101 and 112. Claim 3 is rejected under 35 U.S.C. § 102 as being anticipated by Henkel KGAA, FR 2,759,607 A ("*Henkel*"), as evidenced by Derwent Abstract AN 1998-323821 ("*Derwent '821*"). Claim 3 is also rejected under 35 U.S.C. § 102 as being anticipated by Lion Corp, DE 36 17 306 A ("*Lion*"), as evidenced by Derwent Abstract AN 1986-320274 ("*Derwent '274*"). Claims 3-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Horiuchi et al., U.S. Patent No. 4,486,334 ("*Horiuchi*"), in view of Hawkins, U.S. Patent No. 5,952,285 ("*Hawkins*"), and Albright & Wilson LTD, AU-A-16451/95 ("*Albright*"). Applicants believe all pending claims are allowable over the art of record and respectfully request reconsideration and allowance of the claims.

I. The Abstract has been revised.

The Examiner has objected to the Abstract. By this Response, Applicants have amended the Abstract. Therefore, Applicants respectfully request the Examiner to remove the objection to the Abstract.

II. Claim 4 is allowable.

The Examiner has objected to claim 4. By this Response, Applicants have amended claim 4 to state "particle size" as suggested by the Examiner. Therefore, Applicants respectfully request the Examiner to remove the objection to claim 4.

III. Claims 1-2 are allowable under § 101 and § 112.

The Examiner has rejected claims 1 and 2 under § 101 and § 112. By this Response, Applicants have amended claims 1 and 2. Applicants respectfully submit that claims 1 and 2, as amended, are allowable under §101 and §112. Therefore, Applicants respectfully request withdrawal of these rejections and allowance of claims 1 and 2.

IV. Claim 3 is not anticipated by *Henkel* as evidenced by *Derwent '821*.

Applicants respectfully traverse the Examiner's rejection of claim 3 under 35 U.S.C. § 102 as being anticipated by *Henkel* as evidenced by *Derwent '821*. Applicants submit that claim 3, as amended, is not anticipated by *Henkel* as evidenced by *Derwent '821* because *Henkel* as evidenced by *Derwent '821* fails to disclose each and every limitation of the claim.

Claim 3 is an independent claim that recites "an aqueous surfactant in a protolamellar phase." Nowhere does *Henkel* as evidenced by *Derwent '821* disclose an aqueous surfactant in a protolamellar phase. *Henkel* as evidenced by *Derwent '821* teaches a lamellar phase instead of a protolamellar phase. (*Derwent '821*, pg. 2, ln. 11) For instance, *Derwent '821* teaches that "aqueous (I) concentrate in the **lamellar** gel phase is used." (*Derwent '821*, pg. 2, ln. 11, emphasis added) A lamellar gel phase does not disclose a protolamellar phase. Consequently, *Henkel* as evidenced by *Derwent '821* does not disclose each and every element of claim 3.

The Examiner also indicates that "[t]he disclosed compositions would have inherently provided the protolamellar structure based on the components and the characterization of the compositions as lamellar." (Office Action, pg. 4, lns. 5-8) . It appears that the Examiner is arguing that *Henkel* as evidenced by *Derwent '821* inherently provides the protolamellar phase recitation of claim 3 as *Henkel* as evidenced by *Derwent '821* does not expressly disclose the limitations of claim 3. In order to show inherency, the Examiner must "provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **necessarily flows** from the teachings of the applied prior art." *Manual of Patent Examining Procedure* § 2112 (2005) (citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)) (Emphasis added). It is not sufficient for the Examiner merely to show that "a result or characteristic **may occur or be present** in the prior art." *MPEP* § 2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)) (Emphasis added). Protolamellar phases are different than lamellar phases with different characteristics. For instance, Applicants' specification teaches that protolamellar phases "are clear and optically isotropic and are typically less viscous than normal G-phases [lamellar phases] but have the capacity to form stable suspensions (Applicants' spec., pg. 2, lns. 13-15) Thus, *Henkel* as evidenced by *Derwent '821* does not disclose, either expressly or inherently, all the limitations in claim 3.

Because *Henkel* as evidenced by *Derwent* '821 does not disclose all elements of claim 3, it does not anticipate claim 3. Therefore, Applicants request withdrawal of this rejection and allowance of the claim.

V. Claim 3 is not anticipated by *Lion* as evidenced by *Derwent* '274.

Applicants respectfully traverse the Examiner's rejections of claim 3 under 35 U.S.C. § 102 as being anticipated by *Lion* as evidenced by *Derwent* '274. Applicants submit that claim 3, as amended, is not anticipated by *Lion* as evidenced by *Derwent* '274 because *Lion* as evidenced by *Derwent* '274 fails to disclose each and every limitation of this claim.

As noted above, independent claim 3 recites "an aqueous surfactant in a protolamellar phase." Nothing in *Lion* as evidenced by *Derwent* '274 discloses an aqueous surfactant in a protolamellar phase. *Lion* as evidenced by *Derwent* '274 merely teaches producing concentrated pearling dispersions by warming a mixture of a wetting agent and a fatty glycol ester and aging the mixture. (*Derwent* '274, Abstract)

The Examiner again appears to argue inherency by indicating that "[t]he disclosed compositions would have inherently provided the protolamellar structure based on the components and the characterization of the compositions as lamellar." (Office Action, pg. 4, lns. 5-8) Nothing in *Lion* as evidenced by *Derwent* '274 discloses formation of a protolamellar phase. Instead, *Lion* as evidenced by *Derwent* '274 teaches uniform crystal growth. For instance, *Lion* as evidenced by *Derwent* '274 discloses that "[a]geing is effected at a temp. below the point of (Ia) and (Ib) but high enough to permit uniform crystal growth." (*Derwent* '274, pg. 2, lns. 7-10) Nothing in *Lion* as evidenced by *Derwent* '274, even suggests an aqueous surfactant in a protolamellar phase. Thus, *Lion* as evidenced by *Derwent* '274 does not disclose, either expressly or inherently, all the limitations in claim 3.

Because *Lion* as evidenced by *Derwent* '274 does not teach each and every element of independent claim 3, it does not anticipate claim 3. Therefore, the Applicants request withdrawal of this rejection and allowance of the claim.

VI. Claims 3-6 are patentable over *Horiuchi* in view of *Hawkins* and *Albright*.

Applicants respectfully traverse the Examiner's rejections of claims 3-6 under § 103 as being unpatentable over *Horiuchi* in view of *Hawkins* and *Albright*. Applicants submit that

contrary to MPEP § 2143, the Examiner has failed to make a *prima facie* case of obviousness in rejecting such claims in that (1) the Examiner has failed to cite references that teach or suggest all of the elements recited in the rejected claims, and (2) the Examiner has failed to articulate a motivation or suggestion to combine the references with a reasonable expectation of success.

Amended claims 3, 4, and 5 are independent claims, and claim 6 depends upon independent claim 5. Claim 3 recites “an aqueous surfactant in a protolamellar phase.” Claim 4 recites “sufficient electrolyte to form with said sulphate and water an optically isotropic protolamellar phase which exhibits optically anisotropic properties and lamellar symmetry when subject to shear.” Claim 5 recites “a protolamellar phase.”

Nothing in *Horiuchi* teaches or suggests an aqueous surfactant in a protolamellar phase or a protolamellar phase, as recited in claims 3 and 5, respectively. Instead, *Horiuchi* teaches the crystallization of pearlescent agents in an aqueous solution formed from the middle crystal phase. (*Horiuchi*, Col. 2, lns. 36-41) For example, *Horiuchi* teaches that “[t]he method is performed by solubilizing the pearlescent agent in an aqueous solution of a surfactant, at least a substantial amount thereof being in the state of middle phase liquid crystals.” (*Horiuchi*, Abstract). Moreover, nothing in *Horiuchi* teaches or suggests sufficient electrolyte to form with said sulphate and water an optically isotropic protolamellar phase which exhibits optically anisotropic properties and lamellar symmetry when subject to shear, as recited in claim 4. For instance, the Examiner notes that “*Horiuchi* et al. differs from the claims in the further addition of electrolyte.” (Office Action, pg. 6, lns. 3-4)

Albright cannot supply *Horiuchi* with the missing limitations. Nothing in *Albright* teaches or suggests an aqueous surfactant in a protolamellar phase or a protolamellar phase, as recited in claims 3 and 5. Moreover, nothing in *Albright* teaches or suggests sufficient electrolyte to form with said sulphate and water an optically isotropic protolamellar phase which exhibits optically anisotropic properties and lamellar symmetry when subject to shear, as recited in claim 4. *Albright* merely teaches preparation of a low viscosity pearlescent concentrate without the addition of viscosity modifiers. (*Albright*, Abstract) For example, *Albright* teaches that “[i]t is an object of this invention to provide low viscosity pearlescent concentrates . . . which preferably do not require the addition of a viscosity modifier and preferably which is *translucent* in the finished product.” (*Albright*, pg. 2, lns. 3-6 (Emphasis added)) Clearly, *Albright* does not teach

or suggest an aqueous surfactant in a protolamellar phase or an optically isotropic protolamellar phase.

Furthermore, contrary to MPEP §§ 2143.01 and 2143.02, the Examiner has failed to articulate a motivation or suggestion to combine *Horiuchi* and *Hawkins* with a reasonable expectation of success with respect to claims 3-5. Applicants respectfully submit that the *prima facie* case of obviousness is thus yet further lacking.

Hawkins teaches addition of a surfactant-desolublizer to form clear solutions from hexagonal or cubic phases of surfactants. (*Hawkins*, col. 19, lns. 28-30) For example, *Hawkins* teaches that “[o]n addition of sufficient dissolved surfactant-desolubliser, the . . . hexagonal phases . . . comprise **rod shaped** surfactant micelles.” (*Hawkins*, col. 19, lns. 28-32 (Emphasis added)) Additionally, *Hawkins* teaches that solutions with surfactant desolubilizer have an X-ray diffraction plot that is “consistent with the presence of a hexagonal or **lamellar** structure.” (*Hawkins*, col. 8, lns. 3-5 (Emphasis added)) In contrast, *Horiuchi* teaches solubilizing a pearlescent agent into a concentrated solution of surfactant in which the surfactant forms the middle phase (M1) of liquid crystal. (*Horiuchi*, col. 2, lns. 9-13). *Horiuchi* teaches that “the pearlescence of the crystals formed from the lamellar micelles is also somewhat **inferior** to those formed from the middle phase crystals.” (*Horiuchi*, col. 2, lns. 52-55 (Emphasis added)) Furthermore, *Horiuchi* teaches that “[t]he pearlescent crystals formed from the deformed spherical micelles . . . are **less preferred** to those formed from the middle phase liquid crystals.” (*Horiuchi*, col. 2, lns. 48-51 (Emphasis added)) Moreover, *Horiuchi* teaches that “the concentration of the surfactant should be maintained in such a range where the middle phase liquid crystals are the main part of the micelles.” (*Horiuchi*, col. 3, lns. 53-56) Based upon these divergent teachings, there is no motivation or suggestion to combine *Horiuchi* and *Hawkins* with a reasonable expectation of success.

Accordingly, Applicants respectfully request that the Examiner withdraw the § 103 rejections and allow claims 3-5. Since independent claim 3 is submitted to be allowable, dependent claim 6 must *a fortiori* also be allowable, since it carries all the limitations of independent claim 3.

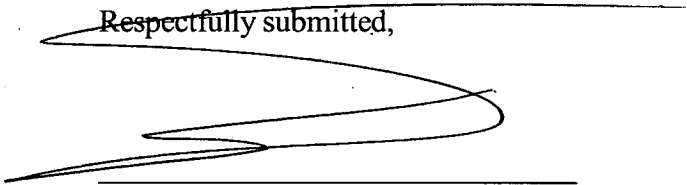
VII. Conclusion

Applicants respectfully request reconsideration, allowance of the pending claims and a timely Notice of Allowance be issued in this case. If the Examiner feels that a telephone conference would expedite the resolution of this case, the Examiner is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art that have yet to be raised, but which may be raised in the future.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769.

Respectfully submitted,



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